

## EXHIBIT 46

DAVID Lombardo  
October 03, 2022

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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STAR AUTO SALES OF BAYSIDE :  
INC., (d/b/a STAR TOYOTA : CASE NO.  
OF BAYSIDE), STAR AUTO SALES: 18-cv-05775 (ERK) (TAM)  
OF QUEENS, LLC, (d/b/a :  
STAR SUBARU) STAR HYUNDAI, :  
LLC, (d/b/a STAR HYUNDAI :  
LLC), STAR NISSAN, INC., :  
(d/b/a STAR NISSAN)), METRO :  
CHRYSLER PLYMOUTH, INC. :  
(d/b/a STAR CHRYSLER JEEP :  
DODGE), STAR AUTO SALES OF :  
QUEENS COUNTY, LLC, (d/b/a :  
STAR FIAT) and STAR AUTO :  
SALES OF QUEENS VILLAGE, LLC:  
(d/b/a STAR MITSUBISHI), :  
Plaintiffs :  
:  
:  
vs. :  
:  
VOYNOW, BAYARD, WHYTE AND :  
COMPANY, LLP, HUGH WHYTE :  
and RANDALL FRANZEN, :  
:  
Defendants :  
\* \* \*

Videotape deposition of DAVID LOMBARDO, held  
at the offices of U.S. LEGAL SUPPORT, 1818 Market  
Street, 14th Floor, Philadelphia, Pennsylvania 19103,  
beginning at 10:54 a.m., on Monday, October 3, 2022,  
before Alice T. Mattes, Court Reporter and Notary  
Public, there being present:

\* \* \*

U.S. LEGAL SUPPORT  
Northeast Processing Center  
1818 Market Street, Suite 1400  
Philadelphia, Pennsylvania 19103  
(877) 479-2484

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1 APPEARANCES:

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MILMAN LABUDA LAW GROUP, PLLC  
BY: JOSEPH M. LABUDA, ESQUIRE  
and  
JEREMY M. KOUFAKIS, ESQUIRE  
3000 Marcus Avenue  
Suite 3W8  
Lake Success, NY 11042  
joe@mllaborlaw.com  
jeremy@mllaborlaw.com  
-- Representing the Plaintiffs

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ALSO PRESENT: Videographer, Scot Dantzer

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Jacqueline Cutillo

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Robert Seibel

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Steven Rambam (telephonically present)

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1                   Would that be from a supervisor  
2 saying, hey, look, we're here to do tax work or  
3 we're here to do X, you know, type of work?

4                   A        Yeah. I mean, it would be talked  
5 about.

6                   Q        Okay.

7                   A        Sometimes I was involved in like  
8 preparing the engagement letter, but not all the  
9 time.

10                  Q        Okay.

11                  All right. So let me ask you  
12 generally, 'cause I think you kind of talked about  
13 three buckets of services; tax services, financial  
14 statements, and interim reviews. Is that accurate?

15                  MS. FITZGERALD: Objection.

16 BY MR. LABUDA:

17                  Q        You can answer. Sorry.

18                  A        Interim visits.

19                  Q        Interim visits, okay.

20                  A        That's what we called them.

21                  Q        All right. So with respect to let's say tax  
22 services, and let's talk specifically about  
23 dealerships. What is the scope of work that's  
24 involved and the type of work that's done with  
25 respect to a client who has engaged Voynow to

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1 perform tax services?

2 A Towards the end of the year, I would  
3 say starting in November and December, we'd go out  
4 for tax planning visits. And then shortly after the  
5 beginning of the year I guess we'd finish up a lot  
6 of the tax work.

7 Q All right. And what would that -- what  
8 would that entail in terms of the actual work that  
9 you would be performing with respect to tax services  
10 for an auto client?

11 A Just going through the trial balance,  
12 reviewing account balances. Writing off any  
13 uncollectible receivables. Adjusting prepaids. You  
14 kind of primarily focus on the balance sheet.

15 Q All right. And approximately how many times  
16 would you visit a client who was requesting tax  
17 services? How many times a year would you go?

18 A Times a year, I would say twice.

19 Q Okay. You said --

20 A Yeah, tax planning before the end of  
21 the year and then after the year to wrap up  
22 everything.

23 Q Okay. So right. Once before the tax year  
24 ends, assuming I guess fiscal year ending on  
25 December 31st of the year.

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1 A Yeah.

2 Q -- for the client?

3 A Yeah, the clients with IRS.

4 Q And what was the purpose behind providing  
5 financial statements? What was the goal there, the  
6 reason for providing financial statements?

7 A You know, sometimes it was required  
8 by the bank for floor plan financing or a particular  
9 loan. Occasionally some clients requested it for  
10 their own internal purposes.

11 Q And then what was the purpose for providing  
12 interim visits?

13 A By client request. Give 'em a level  
14 of comfort that everything's being reconciled and  
15 handled appropriately during the year.

16 Even when we do our tax work, you  
17 know, that's primarily, yeah, November through  
18 March. You know, you kind of want to see what's  
19 being done throughout the year. Some clients are  
20 interested in that.

21 Q Okay. As an accountant providing interim  
22 visits was one of your jobs to look for anomalies  
23 during these interim visits?

24 A Yeah.

25 Q And the anomalies could be as innocuous as

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1 As part of your -- with respect to  
2 the different services, would those be listed in an  
3 engagement letter that Voynow provided to the  
4 client?

5 A Yeah. Each of those types of  
6 services should have an engagement letter.

7 Q Okay. And to your understanding did the  
8 engagement letters specify what level or what type  
9 of service Voynow was providing to a client?

10 A Yes.

11 Q Did you have any internal discussions at  
12 Voynow about engagement letters in general?

13 A We didn't put too much of an emphasis  
14 on those.

15 Q Okay. Were there any conversations about  
16 engagement letters with respect to interim visits?

17                   A            I do remember shortly before I had  
18 left our quality control person Ken Mann suggested  
19 engagement letters for everything, including interim  
20 visits. And, you know, a lot of people -- a lot of  
21 the partners just didn't want to do that. They  
22 didn't want to issue a separate engagement letter  
23 just for interim visits.

24 Q Okay. So if I'm understanding correctly,  
25 there would be an engagement letter with respect to

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1 supervisor or an owner for their review and editing  
2 before it was sent out to the client?

3 A I would say it would go to the  
4 partner for review and editing.

5 Q Okay. And with respect to the reports that  
6 you provided and included in your reports, would you  
7 also include recommendations, if necessary?

8 A Sometimes, yeah.

9 \* \* \*

10 (Pause.)

11 \* \* \*

12 BY MR. LABUDA:

13 Q All right. Now, you had mentioned that one  
14 of the dealerships that you worked on at Voynow was  
15 Star. Correct?

16 A Correct.

17 Q Okay. And do you have any recollection of  
18 when it was that you worked on the -- on the Star  
19 dealerships?

20 A I couldn't give you specifics on  
21 that.

22 Q And do you remember doing any particular  
23 work -- well, withdrawn.

24 What type of engagement did Voynow  
25 have with respect to Star?

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1 A I believe the times I was out there  
2 it was only for interim visits.

3 Q All right. So... So and what is it that  
4 you did with respect to these interim visits?

5 A Depending on the accounts I was  
6 assigned, I would, you know, look into balances.

7 Q Okay. And when you say balances, is that  
8 reviewing various schedules?

9 A Correct.

10 Q Okay.

11 A Schedules, reconciliations.

12 Q Do you have any recollection of any  
13 coworkers that worked at the Star dealerships with  
14 you at Voynow?

15 A You mean my coworkers --

16 Q Yeah, your coworkers --

17 A -- at Voynow?

18 Q Yeah, your Voynow coworkers.

19 A To my knowledge, I didn't think any  
20 of them were employees of the Star dealerships.

21 Q Okay. Yeah, let me rephrase it.

22 Were -- do you have any recollection  
23 about the names of the -- or the other Voynow  
24 employees that worked with you on Star?

25 A Yes.

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1 you say you spent on those automobile dealerships  
2 clients versus other clients?

3 A 80/90 percent.

4 Q And when you were hired at Voynow you were  
5 hired -- that was your first job from graduating  
6 Temple?

7 A I did work at M&B Tax Services. M&B  
8 BIRT Tax Services.

9 Q Right out of college.

10 A But -- but I took my first public  
11 accounting job with Voynow in February 2008.

12 Q Okay. And you were hired as a staff  
13 accountant?

14 A They weren't big on titles there.  
15 But it would be entry level, yes.

16 Q Okay. And were you a staff accountant for  
17 the duration of your employment? In other words,  
18 you were never promoted to senior?

19 A They don't -- they don't really do  
20 titles there. Can I defer to Bobby on that?

21 Q Okay. Well, based on your understanding,  
22 did you ever think that you were moved into the role  
23 of a senior, or did you stay as a staff accountant?

24 A They just didn't do titles.

25 Q So you --

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1 A I'm not trying to avoid the question.

2 Q Yes.

3 A It's just like they just don't do  
4 that.

5 Q All right.

6 Okay. And while you were at Voynow  
7 was there a particular partner who you worked with  
8 the most?

9 A I would say I worked with Steve White  
10 the most.

11 Q Okay.

12 A I would say the vast majority of my  
13 work was with Steve White.

14 Q So percentage wise what would that be?

15 A 80/90 percent.

16 Q Okay. Now, I believe you testified that --  
17 and correct me if I'm wrong. But I think you said  
18 that you recalled going to Star physically three or  
19 less occasions. Is that accurate?

20 A I believe so.

21 Q Okay. And you said you started there in  
22 two-thousand -- February 2008 and left in October of  
23 2013. Correct?

24 A Correct.

25 Q So are you able to give us any specificity

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1 as far as when you think you would have physically  
2 visited any of the Star sites on those three  
3 occasions?

4 A I want to say they were during warmer  
5 months. I don't ever remember being there in the  
6 cold.

7 Q Other than that, is there any particular  
8 year that you recall? Like I remember going up  
9 there my first year of employment. I remember going  
10 up there at the end. Anything that you recall?

11 A I want to say it was my first year,  
12 but I'm not absolutely sure.

13 Q Okay.

14 A I was pretty good with entering my  
15 time. I think I would put it in as interim services  
16 client visit.

17 Q So you were shown McCormack Deposition  
18 Exhibit 5 -- this is where we get into trouble  
19 because they're not -- which is this document.

20 MR. LABUDA: Or just Exhibit 5. I  
21 don't think they were identified as  
22 McCormack 5. They were just used as a  
23 McCormack exhibit.

24 MS. FITZGERALD: Okay.

25 MR. LABUDA: Yeah.

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1 A Maybe there's a time I went there for  
2 tax planning. But I wasn't -- I wasn't one of the  
3 normal engagement team members that serviced those  
4 clients.

5 Q So Star wasn't one of your regular clients.

6 A Correct.

7 Q Okay.

8 A During the months of January,  
9 February, March I think I would have been too busy  
10 going to my other typical clients that they wouldn't  
11 have used me for the New York clients.

12 Q All right. So when you say you had your  
13 typical clients, were your typical clients like  
14 largely based in the Pennsylvania area?

15 A Pennsylvania/Jersey.

16 Q All right. And Star would not be one of  
17 your typical clients.

18 A No. I wasn't on their primary  
19 engagement team --

20 Q Got it.

21 A -- if that makes sense.

22 Q Yep.

23 How did you first hear about this  
24 lawsuit?

25 A I was coming home from a mortgage

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1 A One of the Star entities.

2 Q Do you know which one?

3 A No.

4 Q So you said that you were looking at the  
5 parts and service receivable schedule.

6 A (Witness nods head.)

7 Q Correct?

8 A Um-hmm.

9 Q For what dealership?

10 A One of the Star entities.

11 Q Which one?

12 A You did them all at the same time, so  
13 it was kind of...

14 Q So --

15 A I don't recall.

16 Q -- when you said that you believe you saw a  
17 receivable in his name on one of the schedules, for  
18 which dealership?

19 A It was in his name. I don't recall  
20 which dealership.

21 Q Okay. What was the amount of the  
22 receivable?

23 A It wasn't a huge amount of money.

24 Q So --

25 A Less than ten thousand.

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1 Q Okay.

2 A I would even venture to say it was  
3 less than five thousand.

4 Q Okay. Can you be any more specific?

5 A I don't have the specific dollar  
6 amount.

7 Q Okay. So... And you mentioned that it had  
8 been listed for in excess of 90 days. Is that  
9 right?

10 A Yes.

11 Q Okay. And how many days, do you know?

12 A No.

13 Q Okay. So I just want to make sure I  
14 understand what your best recollection is, is you  
15 remember there being some sort of receivable on the  
16 schedule of a dealership, but you don't know --

17 A It was parts or service, yeah.

18 Q But you don't know which dealership it was.

19 A No. I don't recall which Star entity  
20 it was, no.

21 Q Okay. And you don't know what the amount  
22 was, but you believe it was probably less than five  
23 thousand dollars?

24 A Yes.

25 Q Okay. And you don't remember how long it

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1 was listed as far as aging.

2 A Over 90. That's all I recall.

3 Q Okay. But you don't know how much over 90.

4 A No.

5 Q All right.

6 And you said that you recall meeting  
7 with Vivian's husband. What's his name?

8 A I don't recall.

9 Q Okay.

10 A But I know it was Vivian's husband.

11 Q And how do you know that?

12 A Same last name, and I think -- I  
13 think Randy confirmed it.

14 Q Okay. And you said that you recall meeting  
15 him in a room, but you don't remember physically  
16 which dealership you were in. Correct?

17 A Correct.

18 Q Okay. Do you remember what part of the  
19 dealership you were in, in other words, like what  
20 floor?

21 A The service parts area. I think it  
22 was the ground floor.

23 Q Okay.

24 A You normally don't have service or  
25 parts on the second floor.

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1 Q Okay. Did you know who he reported to as  
2 the service manager?

3 A Know for certain? I guess not. No.  
4 I didn't work there.

5 Q Okay. Do you remember anything that he told  
6 you about the reason why there was an entry listed  
7 in his name?

8 A I just remember his response saying  
9 that, you know, he could have written it off.

10 Q So you remember him specifically saying that  
11 he could have written it off?

12 A Yes.

13 Q Okay.

14 A I guess he was justifying, you know,  
15 it's okay because he didn't write it off. Which  
16 it's just not a thing to say. That's why it stuck  
17 out in my mind so much.

18 Q Okay. And could it have been an open repair  
19 that you were asking him about, an open repair  
20 order?

21 MR. LABUDA: Objection, asked and  
22 answered.

23 THE WITNESS: I'm pretty sure it was  
24 parts.

25 MS. FITZGERALD: Okay.

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1 A I don't recall if anybody else was  
2 there.

3 Q And do you know what Randy did with that  
4 information that you provided?

5 A He kind of talked about it and then  
6 he kind of just dismissed it.

7 Q How do you know --

8 A He didn't think it was that big of a  
9 deal.

10 Q -- that he dismissed it? How do you know  
11 that he didn't do anything afterwards with that  
12 information? Do you know?

13 A I guess that's possible, yeah.

14 Q So you don't know. Is that fair to say?

15 A He just didn't seem -- he didn't seem  
16 to think it was a big deal.

17 Q Okay. But is it fair to say that you don't  
18 know what, if anything, Randy did with the  
19 information you provided?

20 A Okay. I'm agreeable to that.

21 Q Okay. Other than talking to Randy, did you  
22 note it on the schedule that you were working on?

23 A I would have definitely noted that  
24 item, yes.

25 Q Okay.

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1 A A client problem?

2 Q As I understood your testimony, you stated  
3 that you were not aware of any client employees  
4 engaging in theft while you were working on a client  
5 engagement?

6 A As a current matter, no.

7 Q Okay. So that would be true for Star. In  
8 other words, on the occasions when you were  
9 providing services to Star during the course of your  
10 engagement you did not become aware of any  
11 information to indicate that any Star employee was  
12 engaging in theft or fraud.

13 A No.

14 Q Okay.

15 \* \* \*

16 (Pause.)

17 \* \* \*

18 BY MS. FITZGERALD:

19 Q Is internal control the responsibility of  
20 management?

21 A Yes.

22 Q And would you agree that accountants can  
23 make recommendations, but ultimately it's up to  
24 management whether to follow through on those  
25 recommendations?

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1 A I do.

2 Q And is it fair to say that you don't know  
3 what -- you don't know who they spoke to? Correct?

4 A That's true.

5 Q And you don't know what explanation was  
6 provided. Correct?

7 A I mean, I could tell by the notes  
8 like, you know, the first item was on the bank  
9 reconciliation.

10 Q Okay. And you don't know --

11 A The schedules need to be cleaned up.  
12 Insurance clean.

13 Q Okay. So does that indicate to you that  
14 that would have been information that likely came  
15 from the client?

16 A Yes.

17 Q And that would have been an explanation that  
18 the client would have given to Voynow for these  
19 entries?

20 A I would believe so, yeah.

21 Q Okay. And an accountant's entitled to rely  
22 on the explanation given by the client if it makes  
23 sense.

24 A Yeah.

25 Q Okay.

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1 A Professional skepticism.

2 Q And looking at the next page of this  
3 exhibit, 8830. Again, rather than go through all  
4 those questions again, but would you agree that the  
5 same parameters apply in terms of you have no  
6 knowledge of what these entries mean or what -- or  
7 who Voynow may have spoken to as far as getting  
8 these explanations?

9 A No.

10 Q Okay. 'Cause you were gone for over a year  
11 at this point. Correct?

12 A Correct.

13 Q And you said that -- I believe you said that  
14 in answering questions about this document that you  
15 didn't believe it was okay to just rely on Vivian.  
16 And maybe I got that wrong.

17 A What document are you referring to?

18 Q This exhibit, Exhibit 6.

19 A As a whole?

20 Q So I think the question was specifically on  
21 the second page of the exhibit where it says All ok  
22 per Vivian.

23 A I think that's poor documentation  
24 there. I mean, you're not really saying anything.

25 Q But you don't know what Vivian told this